



**BUSINESS OF THE COMMISSION**

Meeting Date: May 6, 2014

Agenda Item: 5B

**TITLE**

Consideration of a Resolution Authorizing a Cost Sharing Agreement between Public Utility District No. 1 of Snohomish County and the Mt. Index River Sites Community Club, Inc., Relating to Installation of a Bridge and Access Rights

**SUBMITTED FOR: Items for Individual Consideration**

Generation Kim Moore Department x8606  
Date of Previous Briefing: \_\_\_\_\_ Contact \_\_\_\_\_ Extension \_\_\_\_\_

Estimated Expenditure: \_\_\_\_\_ Presentation Planned

**ACTION REQUIRED:**

- Decision Preparation
- Policy Discussion
- Policy Decision
- Statutory
- Incidental (Information)
- Monitoring Report

**SUMMARY STATEMENT:**

Identify the relevant Board policies and impacts:

*Governance Process, Board Job Description: Ends Policy E-1 (2) Utilities are Dependable*

As part of its integrated resource planning process, the Public Utility District No. 1 of Snohomish County (the "District") has identified small, low impact hydroelectric projects as one of the most economical renewable resources available to meet its future electric supply needs. The District has been engaged in an extensive process to evaluate the feasibility of developing a hydroelectric and fish passage improvement project in the vicinity of Sunset Falls, within the Mount Index Riversites, which are lots developed and sold by R.E. and Priscilla M. Rogers beginning in the 1950's and later covered by the Mount Index Assessor's Plats by Snohomish County (hereinafter "Mount Index Riversites"). The District has filed a preliminary permit and preliminary application document with the Federal Energy Regulatory Commission ("FERC") associated with the proposed project.

FERC has required the District to complete approximately sixteen technical studies to develop the necessary data to inform the licensing process for the potential project, which studies are due to be completed in 2015. However, road access to a large portion of the Mount Index Riversites has been blocked since December 2013 by a series of landslides, and repair or reconstruction of the portion of the road affected by the landslides appears not to be feasible or cost-effective.

The Mt. Index River Sites Community Club, Inc., (“MIRCC”) holds title to much of the roadway system and certain “community” and other properties and lots within the Mount Index Riversites pursuant to deeds from the original owner, and is responsible for operation and maintenance of the roads within Mount Index Riversites. The MIRCC has a keen and urgent interest in restoring access to the many lots that have been made inaccessible by the landslides.

The MIRCC has evaluated potential options for restoring access to the areas of Mount Index Riversites that are currently inaccessible by road, and is proposing to install a steel bridge in the location of a former bridge across the South Fork of the Skykomish River’s Canyon Falls, including any work necessary to construct bridge approaches and roadway connections (the “Bridge Project”), and also to obtain easements sufficient to connect that bridge route to SR 2.

The District has been using a series of temporary access permits to carry out its studies for the Project, it has an immediate need to access the areas of Mount Index Riversites that are currently inaccessible by road in order to carry out and complete the studies required for the FERC process, and the District would benefit from having permanent access rights over the Mount Index Riversites roadway system not only to carry out the current set of studies, but also to enable construction, operation and maintenance of a future project. Future development of the District’s project would be impossible without adequate road access, and the route that would be created into Mount Index Riversites using the proposed bridge also would provide for fewer construction-related impacts as compared to the former road access.

District staff are proposing that the District agree to contribute to the cost of installing the bridge to establish the alternate access route to Mount Index Riversites in exchange for the benefits of reestablishing access along the MIRCC’s proposed route, including obtaining permanent access rights over all roads operated and maintained by MIRCC as well as the bridge, substantially in the form as set forth in the Cost Sharing Agreement in Exhibit A to the Resolution.

The Cost Sharing Agreement provides that operation and maintenance obligations associated with the bridge and the Mount Index Riversites road system would remain with MIRCC, with the exception of potential future maintenance agreements designed to address only the District’s future construction related impacts. The District’s cost obligation would be based upon a schedule of values, but capped at \$250,000. In advance of the work, MIRCC must provide to the District for its review and comment the engineering calculations for the bridge abutments, and the qualifications of the contractor proposed to perform the work. The District also has the right to inspect the work at reasonable times.

Under the proposed agreement, the District would have the right, but not the obligation, to take over completion of the payments for the bridge project if MIRCC were to default, and offset such payments against future maintenance assessments to which the District would be responsible as a landowner within Mount Index Riversites. Similarly, if MIRCC were to fail to undertake required maintenance on the bridge, the District would have the right but not the obligation, to perform necessary maintenance and offset the costs against future assessments.

The first payment will be due once the bridge is installed and open for traffic. Permanent access rights would be granted to the District after the first payment, and would revert to the respective property owner if the District formally abandoned the project, or if it defaulted on its payments. There also is a contingency in the Cost Sharing Agreement that access rights must be obtained providing access from the north side of the bridge to SR 2, and the parties are negotiating those access rights now.

Finally, because a question has been raised about whether MIRCC retains sufficient rights as against the BNSF, to construct the bridge in its former location, and to continue to own, operate and maintain the road system in the vicinity of the former bridge location, the proposed resolution includes a provision that requires MIRCC to demonstrate to the satisfaction of the District that it has sufficient authority to construct the bridge and grant to and/or obtain in favor of the District the permanent access rights over the bridge and said road system before the General Manager is authorized to sign the Agreement.

*List Attachments:*

Resolution

Exhibit A - Cost Sharing Agreement, with attachments

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION Authorizing a Cost Sharing Agreement between Public Utility District No. 1 of Snohomish County and the Mt. Index River Sites Community Club, Inc., Relating to Installation of a Bridge and Access Rights

WHEREAS, Public Utility District No. 1 of Snohomish County (the “District”) has been engaged in an extensive process to evaluate the feasibility of developing a hydroelectric and fish passage improvement project in the vicinity of Sunset Falls, within the Mount Index Riversites, which are lots developed and sold by R.E. and Priscilla M. Rogers beginning in the 1950’s and later covered by the Mount Index Assessor’s Plats by Snohomish County (hereinafter “Mount Index Riversites”), including filing a preliminary permit and preliminary application document with the Federal Energy Regulatory Commission (“FERC”); and

WHEREAS, FERC has required the District to complete approximately sixteen technical studies to develop the necessary data to inform the licensing process for the potential project, which studies are due to be completed in 2015; and

WHEREAS, road access to a large portion of the Mount Index Riversites has been blocked since December 2013 by a series of landslides, and repair or reconstruction of the portion of the road affected by the landslides appears infeasible or not cost-effective; and

WHEREAS, the Mt. Index River Sites Community Club, Inc., (“MIRCC”) holds title to much of the Mount Index Riversites road system and certain “community” and other properties and lots within the Mount Index Riversites pursuant to deeds from the original owner, and is responsible for operation and maintenance of the roads within Mount Index Riversites; and

WHEREAS, the MIRCC has evaluated potential options for restoring access to the areas of Mount Index Riversites that are currently inaccessible by road, and is proposing to install a steel bridge in the location of a former bridge across the South Fork of the

Skykomish River's Canyon Falls, including any work necessary to construct bridge approaches and roadway connections (the "Bridge Project"), and also to obtain easements sufficient to connect that bridge route to SR 2; and

WHEREAS, the District has been using a series of temporary access permits to carry out its studies for the Project, it has an immediate need to access the areas of Mount Index Riversites that are currently inaccessible by road in order to carry out and complete the studies required for the FERC process, and the District would benefit from having permanent access rights over the road system in Mount Index Riversites not only to carry out the current set of studies, but also to enable construction, operation and maintenance of a future project; and

WHEREAS, future development of the District's project would be impossible without adequate road access, and the route that would be created into Mount Index Riversites using the proposed bridge also would provide for fewer construction-related impacts as compared to the former road access; and

WHEREAS, District staff recommend that the District agree to contribute to the cost of installing the bridge to establish the alternate access route to Mount Index Riversites in exchange for the benefits of reestablishing access along the MIRCC's proposed route, including obtaining permanent access rights over the Mount Index Riversites road system as well as the bridge, substantially in the form as set forth in the Cost Sharing Agreement in Exhibit A hereto; and

WHEREAS, under the Cost Sharing Agreement, operation and maintenance obligations associated with the bridge and the Mount Index Riversites road system would remain with MIRCC, with the exception of potential future maintenance agreements designed to address only the District's future construction related impacts; and

WHEREAS, based upon the recommendation of staff, the Board finds that the Cost Sharing Agreement between the District and MIRCC would benefit the District and its ratepayers, provided that MIRCC has first established its authority to construct the bridge and grant to and/or obtain in favor of the District the permanent access rights over the bridge and the Mount Index Riversites road system.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 1 of Snohomish County, Washington, that the Cost Sharing Agreement between the District and the Mt. Index River Sites Community Club, Inc., is hereby approved, and the General Manager or his designee is authorized to execute the Cost Sharing Agreement in substantially the form set forth in Exhibit A hereto, provided that MIRCC first demonstrate, to the satisfaction of the District, adequate authority to construct the bridge and grant to and/or obtain in favor of the District the permanent access rights over the bridge and the Mount Index Riversites road system.

PASSED AND APPROVED this 6th day of May, 2014.

\_\_\_\_\_  
President

\_\_\_\_\_  
Vice-President

\_\_\_\_\_  
Secretary

**COST SHARING AGREEMENT**  
**Between**  
**PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY**  
**and**  
**MT. INDEX RIVER SITES COMMUNITY CLUB, INC.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Public Utility District No. 1 of Snohomish County, Washington (“the District”), a Washington municipal corporation and public utility district, and Mt. Index River Sites Community Club, Inc. (“MIRCC”), a Washington nonprofit corporation, each of which is hereinafter referred to individually as a “Party” or collectively as “Parties.”

**I. RECITALS**

1. MIRCC is a nonprofit corporation whose members are owners of land within the Mount Index Riversites lots, which are lots developed and sold by R.E. and Priscilla M. Rogers beginning in the 1950’s and later covered by the Mount Index Assessor’s Plats by Snohomish County (hereinafter “Mount Index Riversites”). MIRCC holds title to all of the roads and certain “community” and other properties and lots within the Mount Index Riversites pursuant to deeds from the original owner of the lots recorded in 1963 and 1968. MIRCC is responsible for operation and maintenance of the roads within Mount Index Riversites.
2. The District provides electric service throughout Snohomish County and Camano Island, and depends upon having sources of supply that are reliable, adequate with reasonable reserves, and available to meet the needs of the future. The District’s Board has adopted a policy of meeting all future load growth with conservation and renewable sources of energy. As part of its integrated resource planning process, the District has identified small, low impact hydroelectric projects as one of the most economical renewable resources available to meet its future electric supply needs.
3. The District has been engaged in an extensive process to evaluate the feasibility of developing a hydroelectric and fish passage improvement project in the vicinity of Sunset Falls, within the Mount Index Riversites, including filing a preliminary permit and preliminary application document with the Federal Energy Regulatory Commission (“FERC”).
4. FERC has required the District to complete approximately sixteen technical studies to develop the necessary data to inform the licensing process for the potential project, which studies are due to be completed early in 2015.
5. Road access to a large portion of the Mount Index Riversites has been blocked since December 2013 by a series of landslides, and repair or reconstruction of the portion of the road affected by the landslides appears not to be feasible or cost-effective.
6. MIRCC has evaluated potential options for restoring access to the areas of Mount Index

Riversites that are currently inaccessible by road, and is proposing to install a steel bridge in the location of a former bridge across the South Fork of the Skykomish River's Canyon Falls, including any work necessary to construct bridge approaches and roadway connections (the "Bridge Project"), and also to obtain easements sufficient to connect that bridge route to SR 2, as shown in Exhibit A.

7. The District has been using a series of temporary access permits to carry out its studies for the Project. It has an immediate need to access the areas of Mount Index Riversites that are currently inaccessible by road in order to carry out and complete the studies required for the FERC process, and the District would benefit from having permanent easements over the MIRCC roads not only to carry out the current set of studies, but also to enable construction, operation and maintenance of a future project. Future development of the Project would be impossible without adequate road access, and the route that would be created into Mount Index Riversites using the proposed bridge also would provide for fewer construction-related impacts as compared to the former road access.
8. Given the benefits it would obtain from reestablishing access along the proposed route, the District is willing to contribute to the cost of installing the bridge to establish the alternate access route to Mount Index Riversites, upon the terms and conditions set forth in this Agreement. The Parties agree that MIRCC would be responsible for owning, operating and maintaining the bridge, and for any future repair or replacement of the bridge.

NOW, THEREFORE, in consideration of the covenants, assurances and mutual promises herein the Parties agree as follows:

## II. TERMS

1. Purpose. The purpose of this Agreement is to establish the respective roles and responsibilities between the District and MIRCC, for the funding and the construction of the Bridge Project to restore access to the Mount Index Riversites. The recitals set forth above are incorporated herein as substantive terms of this Agreement.
2. Term and Termination. The term of this Agreement is from the date of execution through the Completion Date, or as otherwise terminated or extended by the mutual consent of the Parties in writing. The Completion Date shall be defined as the date that the cost of the Bridge Project is paid in full, provided, however:
  - a. That if the District formally abandons its efforts to investigate, develop or license the proposed hydroelectric and fish passage improvement project, then this Agreement shall terminate, and the easement rights granted by MIRCC to the District under Paragraph II.3.a.viii shall be deemed abandoned and shall revert to the MIRCC.
  - b. If MIRCC defaults on its obligations to construct or fund the Bridge Project, the District shall have the option and right to terminate this Agreement, and the easement rights granted by MIRCC to the District under Paragraph II.3.a.viii shall remain fully in effect.

- c. If the District defaults on its obligations to provide funding, MIRCC shall have the option and right to terminate this Agreement, and the easement rights granted by MIRCC to the District under Paragraph II.3.a.viii. shall be deemed abandoned and shall revert to MIRCC.
- d. Either Party may terminate this Agreement, in whole or in part, in writing, if the other Party defaults on any or all of its obligations under this Agreement through no fault of the other Party, provided that insofar as practicable, the Party terminating the Agreement will give:
  - i. Written notice of intent to terminate at least thirty (30) calendar days prior to the date of termination stating the manner in which the other Party has failed to perform the obligations under this Agreement; and
  - ii. An opportunity for the other Party to cure the default within at least thirty (30) calendar days of notice of the intent to terminate. In such case, the Notice of Termination will state the time period in which cure is permitted and any other appropriate conditions.
  - iii. If the other Party fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the Notice of Termination or any extension thereof, granted by the Party not at fault, this Agreement shall be deemed terminated.
- e. Rights and duties upon termination. A termination by any Party shall not extinguish or release either Party from liability, claims or obligations to third parties existing as of the time of termination. Any costs incurred prior to proper notification of termination will be borne by the Parties in accordance with the terms of this Agreement. The release and indemnification provisions set forth in this Agreement and all remedial provisions shall survive termination of this Agreement.

### 3. Scope of Work

- a. Roles and Responsibilities of MIRCC. MIRCC shall be responsible for the following:
  - i. MIRCC shall be responsible for providing or contracting to provide all of the services, materials and equipment to procure, design and install a steel bridge in the location of the former bridge across the South Fork of the Skykomish River, including any work to prepare, reconstruct or replace approaches or abutments and road connections necessary to make the bridge safe for vehicular traffic. The bridge shall have a 13'6" driving lane, a 140-foot span and an HS-25 load rating, with galvanized steel components and epoxy coated deck, and shall be supplied by Acrow Bridge or equivalent.

- ii. For purposes of cost sharing under this Agreement, MIRCC shall provide the District with a firm Bridge Project cost schedule, together with supporting documentation acceptable to the District. The Cost Schedule shall be attached to this Agreement as Exhibit B, and shall include line items for a bridge installation milestone payment, and for monthly or other periodic installment payments on the balance thereafter until the Completion Date.
  - a. Changes. In the event that material, unforeseen conditions outside the control of MIRCC cause a substantial change in the cost of the Bridge Project, MIRCC shall notify the District in writing within ten (10) days of learning of such change, and shall provide to the District a detailed statement identifying and documenting such changed conditions, together with a proposal for a change to the Cost Schedule.
  - b. The Parties agree to review such changed conditions and negotiate in good faith for an equitable adjustment to the Cost Schedule. No change to the Cost Schedule shall be effective unless mutually agreed in writing between the Parties.
- iii. At all times, MIRCC shall own and operate the bridge, and shall maintain it in accordance with the manufacturer's recommendations.
- iv. MIRCC shall provide insurance for the construction and installation of the Bridge Project, as well as for ongoing operation of the bridge once it is installed and operational.
- v. In advance of the work, MIRCC shall provide to the District for its review and comment the engineering calculations for the bridge abutments, and the qualifications of the contractor proposed to perform the work.
- vi. MIRCC is solely responsible for obtaining and satisfying the conditions of any and all permits, authorizations or regulatory approvals associated with the Bridge Project, and for compliance with any and all applicable laws and regulations.
- vii. Unless otherwise provided for by law, and subject to the indemnification provision in Paragraph II.5.i below, MIRCC shall be solely responsible for any costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, the construction, operation or use of the bridge.
- viii. Upon payment by the District of its share of the bridge installation milestone payment, MIRCC shall grant to the District a permanent easement to use all of the roads and other properties owned or controlled by MIRCC for the District's purposes, substantially in the form set forth in Exhibit C hereto.

MIRCC makes no warranties or representations as to the condition or suitability of the roads, and shall not be responsible for the maintenance and repair of such easements.

ix. MIRCC and the District will work cooperatively to obtain any and all easements or other access rights necessary to provide access from SR 2 to the north side of the bridge. In the event that the District is able to secure easements necessary to provide access from the bridge to SR 2, the District shall ensure that such easements benefit MIRCC in accordance with the same terms. Similarly, in the event MIRCC is able to secure easements necessary to provide access from the bridge to SR 2, MIRCC shall ensure that such easements benefit the District in accordance with the same terms.

b. Roles and responsibilities of the District. The District shall be responsible for the following:

- i. The District has the right to review and comment on the engineering calculations for the bridge abutments, as well as the qualifications of the contractor proposed to perform the Bridge Project, in advance of the work.
- ii. Upon notice from MIRCC that the installation of the Bridge Project is complete and it is open for vehicular traffic, the District shall pay to MIRCC the amount of fifty percent of the bridge installation milestone payment set forth in the Cost Schedule. Payment shall be made within 15 days of the notice unless otherwise agreed between the parties.
- iii. The District shall have the right at all reasonable times to inspect the bridge during construction, as well as thereafter during operation, and to provide feedback to MIRCC on maintenance or deficiencies to be corrected in accordance with industry best practices.
- iv. After making its bridge installation milestone payment, as provided in Paragraph II.3.b.ii above, the District shall pay to MIRCC the amount of fifty percent of each monthly or other periodic installment payment for the cost of the bridge, in accordance with the Cost Schedule, without the requirement of a separate notice. At the request of MIRCC and upon receipt of the necessary vendor information, the District may also pay its share of each installment payment directly to MIRCC's supplier or contractor, as appropriate.
- v. Notwithstanding any other provision of this Agreement, in no event shall the District's funding obligation for bridge installation exceed the total sum of \$250,000. If the District spends the total amount of \$250,000, the parties agree that it has fulfilled all of its obligations under this Agreement and it shall be entitled to all the benefits of this Agreement.
- vi. The District will cooperate with MIRCC to obtain any easements or access

rights necessary to obtain access from SR 2 to the north side of the bridge.

- vii. The District will be responsible for recording the easement granted by MIRCC under Paragraph II.3.a.viii.
  - viii. In the event that MIRCC defaults on any of its obligations to fund or construct the Bridge Project, the District shall have the right and option, but not the obligation, to assume such obligations and/or make such payments in order to ensure that the Bridge Project is completed. If the District exercises this option, the District shall be entitled to deduct from any future assessments or maintenance obligations to which the District may be subject in its capacity as a property owner within Mount Index Riversites, any payments made or costs incurred that exceed the District's cost share as set forth in the Cost Schedule.
  - ix. In the event that MIRCC fails to provide proper maintenance for the bridge in accordance with the manufacturer's recommendations, the District, after providing MIRCC with written notice of the need for maintenance measures and an opportunity for MIRCC to undertake such maintenance, shall have the right and option, but not the obligation, to perform such maintenance measures. If the District exercises this option, such expenditures would not be counted toward the \$250,000 expense cap set forth in Paragraph II.3.b.v. above, and the District shall be entitled to deduct from any future assessments or maintenance obligations to which the District may be subject in its capacity as a property owner within Mount Index Riversites, any costs incurred for such maintenance. This provision shall survive expiration or termination of this Agreement.
  - x. If the District uses the MIRCC roads for construction activities associated with the proposed hydroelectric and fish passage project, it shall maintain the MIRCC roads in a condition that is passable for other landowners, notify MIRCC of any planned temporary closures of the road (if any), and upon completion of construction, return the roads used to a condition that is at least equal to the condition that existed prior to the commencement of construction.
4. Contingencies. The rights and obligations of the parties to this Agreement are contingent upon successful acquisition of any access rights necessary to obtain access from SR 2 to the north side of the bridge.
5. Other Terms.
- a. Availability of Records. Each party shall keep all project records associated with this Agreement for a period of six years from the Completion Date, and make such records available to the other party upon reasonable notice during normal business hours.

- b. Audit. If an audit is requested by either Party, the audited Party agrees to cooperate fully with the auditor or an independent auditor chosen and retained by the auditing party for auditing costs incurred under this Agreement or with any audit otherwise required, if applicable.
- c. Rights and Remedies. The rights and remedies of the parties to this Agreement are in addition to any other rights and remedies provided by law.
- d. No Agency. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party.
- e. No Third Party Rights. It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties.
- f. Binding on Successors. All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives.
- g. Governing Law and Venue. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Any legal action brought resulting from this Agreement shall be brought in the Superior Court of Snohomish County.
- h. Dispute Resolution. The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of authority.
  - i. Designated representatives shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The Designated Representatives shall meet within seven (7) business days of receiving a notice from a designated representative identifying the dispute and the basis for the dispute, and engage in good faith negotiations to resolve the dispute.
  - ii. The parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless the above procedural step is exhausted. The preceding sentence shall not apply to the extent that any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above.
- i. Indemnification. To the extent permitted by law, the parties to this Agreement shall indemnify and save harmless the other party, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs,

claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, or are due to any acts or omissions of the indemnifying Party. No Party shall be required to indemnify save harmless the other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the Party seeking indemnification. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's own negligence. Each Party agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. This indemnification shall survive the termination of this Agreement.

- j. Notices. All notices or requests required or permitted under this Agreement shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by facsimile transmission and shall be deemed received three (3) business days following the date when mailed or on the date when delivered or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests shall be sent to the District and MIRCC addressed as follows:

To the District:

Assistant General Manager, Generation  
Snohomish PUD  
P.O. Box 1107  
Everett WA 98206-1107

To MIRCC:

MIRCC  
PO Box 177  
Index WA 98256

- k. Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of a provision of this Agreement, including failure to require full and timely performance of any provision, shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized parties, and attached to the original Agreement.
- l. Severability. If any of the terms and conditions are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or

unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

- m. Amendments. The Parties reserve the right to amend this Agreement as necessary. No addition or modification to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized representative of each of the Parties.
- n. Entire Agreement. This Agreement, including its Recitals and Exhibits, embodies the Parties' entire Agreement on the matters covered by it, except as supplemented by subsequent amendments to this Agreement. All prior negotiations and draft written agreements are merged into and superseded by this Agreement.
- o. Counterparts. This Agreement shall be executed in two (2) counterparts, any one of which shall be regarded for all purposes as one original.

IN WITNESS WHEREOF, the Parties hereby agree to the terms and conditions of this Agreement as of the date last executed below.

PUBLIC UTILITY DISTRICT NO. 1  
OF SNOHOMISH COUNTY

MT. INDEX RIVER SITES  
COMMUNITY CLUB, INC.

\_\_\_\_\_  
Steven J. Klein  
General Manager

\_\_\_\_\_  
Mark Bollman  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT A – VICINITY MAP

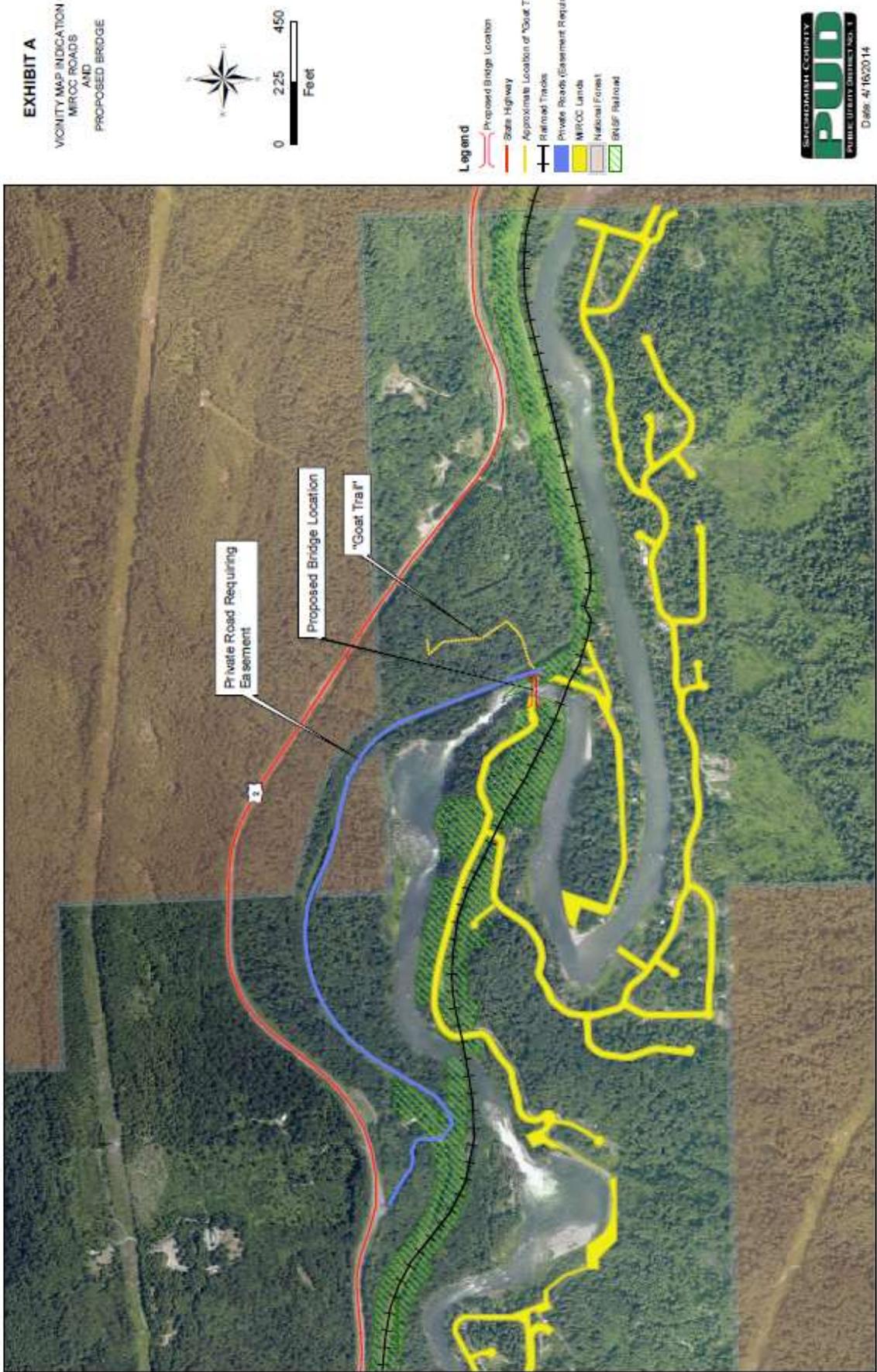


EXHIBIT B – COST SCHEDULE

<b>Item</b>	<b>Anticipated Cost incl Sales Tax</b>	<b>% Participation by MIRCC</b>	<b>% Participation by PUD</b>	<b>Expected Date of Expenditure</b>	<b>Payment Milestone</b>
<b>Engineering/Permitting</b>	<b>\$ 10,860.00</b>	<b>50%</b>	<b>50%</b>	<b>March-April 2014</b>	PUD will reimburse based on actual invoiced costs, payable after Bridge in place, complete, and usable
<b>Installation of Bridge, including abutments</b>	<b>\$ 174,629.00</b>	<b>50%</b>	<b>50%</b>	<b>June 2014</b>	PUD will reimburse based on actual invoiced costs, payable after Bridge in place, complete, and usable
<b>Purchase of Bridge</b>	<b>\$ 297,564.00</b>				Payable over time per payment schedule below, incl interest
<b>TOTAL</b>	<b>\$483,053.00</b>				
Financing Payments on Bridge (month 1)	\$ 24,140.00	50%	50%	Oct 2014	PUD will reimburse per terms of Agreement
Financing Payments on Bridge (months 2 through 48)	\$ 6,764.00	50%	50%	Nov 2014 - Sep 2018	PUD will reimburse monthly per terms of Agreement

EXHIBIT C – EASEMENT

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Easement document on following pages in format for filing with Snohomish County

AFTER RECORDING, PLEASE RETURN TO:

Public Utility District No. 1 of Snohomish County  
Attn: Andrew Cox  
Manager, Real Estate Services  
P.O. Box 1107  
Everett, Washington 98206-1107

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### E A S E M E N T

THIS EASEMENT AGREEMENT ("Easement Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2014, between Mt. Index River Sites Community Club, Inc., a Washington nonprofit corporation ("Grantor") and the Public Utility District No. 1 of Snohomish County, Washington, a municipal corporation under the laws of the State of Washington, ("District"). Grantor and District are sometimes referred to individually herein as "Party" and collectively as "Parties".

WHEREAS, Grantor is the owner of certain lands and premises situated in the County of Snohomish, State of Washington, and legally described on Attachment "A" attached hereto and incorporated herein by this reference ("Property" or "Grantor's Property")

WHEREAS, the District is desirous of acquiring certain rights and privileges across, over, and upon the Property.

NOW, THEREFORE, the Parties agree as follows:

1. Access and Use Easement. In consideration of mutual benefits to be derived and in consideration of the performance of the covenants, terms and conditions hereinafter set forth, Grantor hereby grants and conveys to the District a nonexclusive access and use easement, across, along, in, upon and under Grantor's Property for the perpetual right, privilege, and authority to access and use the Property for District purposes, including but not limited to patrolling, planning, surveying, engineering, soil testing, environmental testing, and siting/placement of District underground and overhead

## **EASEMENT**

improvements, facilities and equipment (including construction, operation, maintenance and repair of said District facilities and equipment).

2. Permits. Grantor hereby grants permission and authorizes the District to apply with Local, Tribal, State and Federal agencies for any and all permits necessary for the District to access and use Grantor's Property in accordance with this Easement Agreement, including but not limited to the siting/placement, construction, operation, maintenance and repair of District underground and overhead improvements, facilities and equipment.

3. Noninterference. Grantor shall at all times conduct its activities and all other activities conducted on Grantor's Property so as not to interfere with, obstruct and/or endanger the usefulness of any District's underground and overhead improvements, facilities and/or equipment located upon Grantor's Property, or in any way interfere with, obstruct and/or endanger the District's access and use of the Property under this Easement Agreement.

4. Cutting, Trimming and Removal of Trees and Vegetation. Grantor hereby authorizes the District to cut, trim and remove any and all brush, trees, other vegetation and/or debris on the Property to the extent reasonably necessary for the District to access and use the Property in accordance with this Easement Agreement.

5. Title to Trees and Vegetation Removed from the Property. Except as otherwise provided herein, the Grantor covenants to and with the District that title to all brush, trees, other vegetation and/or debris trimmed, cut and removed by the District from Grantor's Property pursuant to this Agreement shall be vested in the District. In the event that the District removes commercially marketable timber from the Property pursuant to this Section and sells same, the District shall remit the sale proceeds to the Grantor.

6. Restoration Provision. To the extent that Grantor's Property is disturbed and/or damaged by District's exercise of its rights hereunder, District shall restore the condition of the Property as nearly as reasonably possible to its existing condition prior to said exercise of its rights. To the extent that the

## **EASEMENT**

District sites/places District underground and overhead improvements, facilities and equipment on the Property, the District shall restore the condition of the Property where the improvements, facilities and equipment are sited/located upon removal of the respective improvement, facility and/or equipment by the District.

7. Mutual Indemnification and Hold Harmless.

a. The District agrees to release, indemnify and promise to defend and save harmless the Grantor, its officers, employees and agents from and against any and all liability, loss, damage, expense, actions and claims, including but not limited to costs and reasonable attorney's fees incurred by the Grantor, its officers, employees and agents in defense thereof, arising out of any negligent act and/or omission of the District, its officers, officials, employees and agents in exercising access and use rights pursuant to this Easement Agreement; provided, that in the event of the concurrent negligence of the Parties, the District's obligations hereunder shall apply only to the percentage of fault attributable to the District, its officers, officials, employees and/or agents.

b. The Grantor agrees to release, indemnify and promise to defend and save harmless the District, its officers, employees and agents from and against any and all liability, loss, damage, expense, actions and claims, including but not limited to costs and reasonable attorney's fees incurred by the District, its officers, officials, employees and agents in defense thereof, arising out of any negligent act and/or omission of the Grantor, its officers, employees and agents related Grantor's covenants, duties and obligations under this Easement Agreement; provided, that in the event of the concurrent negligence of the Parties, the Grantor's obligations hereunder shall apply only to the percentage of fault attributable to the Grantor, its officers, employees and/or agents.

c. The foregoing indemnity provisions are specifically and expressly intended to constitute a waiver of each Party's immunity under Washington Industrial Insurance Act, Title 51, with respect to the other Party only, and only to the extent necessary to provide each Party with a full and complete

## EASEMENT

indemnity of claims made by the other Party's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

d. Nothing contained in this Section shall be construed to create a liability or a right of indemnification in any third party.

e. The provisions of this Section shall survive the termination of this Easement Agreement with regard to any event that occurred prior to or on the date of said termination.

8. Title to Property. The Grantor also covenants to the District that Grantor is lawfully seized and possessed of the Property; has a good and lawful right and power to sell and convey same; that same is free and clear of encumbrances; and that Grantor will forever warrant and defend the title to the Property and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

9. Attorney's Fees. In any proceeding regarding the enforcement or interpretation of this Easement Agreement, the prevailing Party shall be entitled to an award of its reasonable attorneys' fees and costs, including costs and fees incurred on appeal.

10. Binding Effect. This access and use easement granted herein and the rights and obligations under this Easement Agreement are intended to and shall run with the Property and shall benefit and bind the parties and their respective heirs, successors and assigns.

11. Complete Agreement. This Easement Agreement represents the complete agreement of the Parties regarding the matters described herein. There are no other verbal or written agreements regarding the easement rights and obligations set forth herein, except as contained in this Easement Agreement. This Easement Agreement may only be modified by a written document signed by the Parties.

12. Severability. If any provision of this Easement Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, such provision

**EASEMENT**

shall not affect the validity of the remaining provisions of this Easement Agreement.

13. Governing Law and Venue. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action to enforce or interpret this Easement Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

14. Authority. Each person signing this Easement Agreement on behalf of an entity represents that they have full authority to sign this Easement Agreement on behalf of such entity.

15. Counterparts. This Easement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Easement.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

GRANTOR:

MT. INDEX RIVER SITES COMMUNITY CLUB, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Washington  
County of Snohomish

**EASEMENT**

I, a Notary Public in and for the State of Washington, certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Mt. Index River Sites Community Club, Inc., to be a free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY**

By: \_\_\_\_\_  
Steven J. Klein, General Manager  
Public Utility District No. 1 of Snohomish County

State of Washington  
County of Snohomish

I, a Notary Public in and for the State of Washington, certify that I know or have satisfactory evidence that Steven J. Klein is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the General Manager of Public Utility District No. 1 of Snohomish County, to be a free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EASEMENT**

**ATTACHMENT "A"**

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Legal Description